

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
CLEVELAND DIVISION

| | | |
|---------------------------|---|---------------------------------|
| UNITED STATES OF AMERICA, |) | CRIMINAL NO.: 1:21-cr-258 |
| |) | |
| Plaintiff, |) | JUDGE JOHN R. ADAMS |
| |) | |
| v. |) | |
| |) | |
| JOSHUA GLOWACKI, |) | <u>SUR-REPLY TO DEFENDANT'S</u> |
| |) | |
| Defendant. |) | <u>MOTION TO SUPPRESS</u> |

Now comes the United States of America, by its counsel, Bridget M. Brennan, Acting United States Attorney, and Michael A. Sullivan, Assistant United States Attorney, and respectfully submits this sur-reply memorandum to Defendant's reply to The United States' response in opposition to Defendant's Motion to Suppress evidence.

Respectfully submitted,

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MEMORANDUM

I. INTRODUCTION

In his reply to the United States response in opposition, Glowacki takes issue with the United States argument that the difference in the advertised price for access to the child pornography dark web site and the amount deducted from Glowacki's Coinbase account is due to fees. Glowacki states that the government's argument is disproved by the very source cited in the United States brief. Glowacki misunderstands the facts and cites only a portion of the relevant language from the website cited.

II. ARGUMENT

Glowacki states:

In fact, the Government goes so far as to assert that, "[e]very Bitcoin transaction requires a fee" and cites to a Coinbase help center page titled "Coinbase pricing and fees disclosures." (COINBASE, <https://help.coinbase.com/en/coinbase/trading-and-funding/pricing-and-fees/fees> (last visited Jul. 29, 2021)).

Ironically, this contention is directly contradicted by statements contained on the very website cited within the Government's Brief. Specifically, the website's home page contains the following unequivocal statement: "[w]e do not charge for transferring cryptocurrency from one Coinbase wallet to another." Id.

(R. 40: Reply to Response in Opposition, PageID 257).

The paragraph cited by Glowacki from Coinbase's website continues:

Coinbase incurs and pays network transaction fees, such as miner's fees, for transactions on cryptocurrency networks (i.e., transfers of cryptocurrency off the Coinbase platform). For these transactions, Coinbase will charge you a fee based on our estimate of the network transaction fees that we anticipate paying for each transaction. In certain circumstances, the fee that Coinbase pays may differ from that estimate. All fees we charge you will be disclosed at the time of your transaction.

<https://help.coinbase.com/en/coinbase/trading-and-funding/pricing-and-fees/fees>.

The problem with Glowacki's argument is that the child pornography dark web site was not hosted on Coinbase. As indicated in the search warrant affidavit, the BTC address to which Glowacki transferred his bitcoin "is associated to the dark net site hosted in the URL childstvo3n3xzei.onion (Target URL) which advertises itself as 'terabytes of child porn private site'. (R. 37-3, Affidavit, PageID 225). Clearly, this is not a site that would be hosted on Coinbase, a legitimate digital currency exchanger based in the United States. Indeed, the affidavit further details "[o]ver 96% of the funds received in the wallet associated to BTC Address were sent to the virtual currency exchanger YoBit.net." (Id.). The affidavit also indicates that YoBit is a virtual currency exchanger based in Russia. (Id.)

Glowacki's bitcoin transfer clearly was transferred off the Coinbase platform and incurred a fee – supporting the United States argument that the discrepancy in price was due to such fee.

III. CONCLUSION

For the foregoing reasons, the Government respectfully requests that this Court deny Defendant Joshua Glowacki's Motion to Suppress.